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**JAN 07 2008**

**OFFICE OF PETITIONS**

In re Application of:  
Ashton-Rickardt et al. :  
Application No. 09/993,363 :  
Filed: November 14, 2001 : LETTER REGARDING  
Attorney Docket No. ARCD:382US : PATENT TERM ADJUSTMENT  
Attorney Docket No. 061300-0232 : and  
Title: INDUCTION OF IMMUNITY : NOTICE OF INTENT TO ISSUE  
USING INHIBITORS OF GRANZYMES : CERTIFICATE OF CORRECTION  
AND METHOD FOR A FIRE FIGHTING :  
VEHICLE :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(B) filed August 16, 2007. Applicants request an adjustment of the initial patent term adjustment from 909 days to 842 days, a reduction of 67 days<sup>1</sup>.

The request for reconsideration of the patent term adjustment is **GRANTED**, to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **eight hundred and forty-one (841)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

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<sup>1</sup> Petitioner has not set forth what calculations were used to arrive at the conclusion that a reduction of 67 days was warranted. Petitioner's arguments are consistent with the Office's conclusion that a reduction of 109 days is warranted.

On August 27, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 909 days. The present application for patent term adjustment was timely filed<sup>2</sup> on or before payment of the issue fee. Applicants disclose that there should be an additional Applicant delay of 108 days due to the filing of a defective Appeal Brief on April 27, 2004. The Appeal Brief correcting the omission was filed on August 13, 2004. A review of the record confirms that a defective Appeal Brief was filed on April 26, 2004 (see notice of non-compliance, mailed July 9, 2004). A compliant Appeal Brief was filed on August 13, 2004. Pursuant to 37 C.F.R. § 1.704(c)(7), this constitutes a delay of 109 days, not 108 days.

Pursuant to 37 C.F.R. § 1.702(a)(2), the Office is required to respond to an appeal taken under 35 U.S.C. § 134 not later than four months after the date on which the appeal was taken. A notice of appeal was filed on January 22, 2004, and a decision by the Board of Patent Appeals and Interferences was not mailed until September 20, 2006, which is four months and 973 days after the receipt of the response. See 37 C.F.R. § 1.703(a)(2).

Consequently, there were 973 days of PTO delay.

Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply after a reply has been filed is a failure to engage in reasonable efforts to conclude prosecution. A response to a restriction requirement was filed on December 24, 2002, and a supplemental response was filed on January 14, 2003. This constitutes a delay of 21 days.

Pursuant to 37 CFR § 1.704(b), the failure to respond to an Office action within three months of the mail date of the Office action is a failure to engage in reasonable efforts to conclude prosecution. A final rejection was mailed on September 10, 2003, and a Notice of Appeal was not filed until January 22, 2004. This constitutes a delay of 43 days. With the present petition, Petitioner has indicated that a letter restarting the period of time for response was mailed on October 20, 2003, and as such, the period of delay was 2 days. The Office agrees with Petitioner's assessment.

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<sup>2</sup> PALM records indicate that the issue fee was paid on September 13, 2007.

Thus, the proper period of reduction is 132 (21 + 2 + 109 + 132) days.

**In view thereof, the revised patent term adjustment is 841 days.**

As this letter was submitted as an advisement to the Office of an error in Patentees' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office. The petition fee has not been charged to Petitioner's Deposit Account.

The Office of Patent Publication will be notified of this decision so that the present application can be processed into a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Paul Shanowski, Senior Attorney, at (571) 272-3225.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a stylized, flowing script.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Encl. Copy of the Revised Patent Term Adjustment

## PTA Calculations for Application: 09/993363

|                          |            |                         |     |
|--------------------------|------------|-------------------------|-----|
| Application Filing Date: | 11/14/2001 | PTO Delay (PTO):        | 973 |
| Issue Date of Patent:    |            | Three Years:            | 0   |
| Pre-Issue Petitions:     | 0          | Applicant Delay (APPL): | 64  |
| Post-Issue Petitions:    | 0          | Total PTA (days):       | 841 |
| PTO Delay Adjustment:    | -68        |                         |     |

## File Contents History

| Number | Date       | Contents Description                            | PTO | APPL | START |
|--------|------------|---|-----|------|-------|
| 80     | 01/04/2008 | ADJUSTMENT OF PTA CALCULATION BY PTO            |     | 109  |       |
| 79     | 01/04/2008 | ADJUSTMENT OF PTA CALCULATION BY PTO            |     | 2    |       |
| 78     | 01/04/2008 | ADJUSTMENT OF PTA CALCULATION BY PTO            | 43  |      |       |
| 66     | 07/16/2007 | MAIL NOTICE OF ALLOWANCE                        |     |      |       |
| 65     | 07/12/2007 | ISSUE REVISION COMPLETED                        |     |      |       |
| 64     | 07/12/2007 | DOCUMENT VERIFICATION                           |     |      |       |
| 63     | 07/12/2007 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED |     |      |       |
| 62     | 07/03/2007 | NOTICE OF ALLOWABILITY                          |     |      |       |
| 61     | 04/28/2007 | DATE FORWARDED TO EXAMINER                      |     |      |       |
| 60     | 04/24/2007 | RESPONSE AFTER NON-FINAL ACTION                 |     |      |       |
| 59     | 01/30/2007 | MAIL NON-FINAL REJECTION                        |     |      |       |
| 58     | 01/26/2007 | NON-FINAL REJECTION                             |     |      |       |
| 57     | 01/26/2007 | CASE DOCKETED TO EXAMINER IN GAU                |     |      |       |
| 56     | 11/15/2006 | AMENDMENT/ARGUMENT AFTER BPAI DECISION          |     |      |       |
| 55     | 09/20/2006 | MAIL BPAI DECISION ON APPEAL - REVERSED         | 973 |      | 33    |
| 54     | 09/20/2006 | BPAI DECISION - EXAMINER REVERSED               |     |      |       |
| 53     | 09/20/2006 | BPAI DECISION 41.50(B)                          |     |      |       |
| 52     | 11/17/2005 | WAIVER OF HEARING BY APPELLANT                  |     |      |       |
| 51     | 10/27/2005 | NOTIFICATION OF APPEAL HEARING                  |     |      |       |
| 50     | 09/02/2005 | DOCKETING NOTICE MAILED TO APPELLANT            |     |      |       |
| 49     | 09/02/2005 | ASSIGNMENT OF APPEAL NUMBER                     |     |      |       |
| 48     | 06/17/2005 | APPEAL AWAITING BPAI DOCKETING                  |     |      |       |
| 47     | 03/21/2005 | MAIL REPLY BRIEF NOTED BY EXAMINER              |     |      |       |
| 46     | 03/18/2005 | REPLY BRIEF NOTED BY EXAMINER                   |     |      |       |
| 45     | 01/25/2005 | CASE DOCKETED TO EXAMINER IN GAU                |     |      |       |
|        |            |   |     |      |       |

|      |            |  |  |    |    |
|------|------------|--|--|----|----|
| 44   | 01/13/2005 | DATE FORWARDED TO EXAMINER   |  |    |    |
| 43   | 01/06/2005 | REPLY BRIEF FILED  |  |    |    |
| 42   | 01/06/2005 | REQUEST FOR ORAL HEARING   |  |    |    |
| 41   | 11/02/2004 | MAIL EXAMINER'S ANSWER   |  |    |    |
| 40   | 11/01/2004 | EXAMINER'S ANSWER TO APPEAL BRIEF                                  |  |    |    |
| 39   | 08/30/2004 | DATE FORWARDED TO EXAMINER   |  |    |    |
| 38   | 08/13/2004 | APPEAL BRIEF FILED   |  |    |    |
| 37   | 07/09/2004 | NOTICE -- DEFECTIVE APPEAL BRIEF                                   |  |    |    |
| 36   | 04/29/2004 | DATE FORWARDED TO EXAMINER   |  |    |    |
| 35.1 | 04/26/2004 | DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED                          |  |    |    |
| 35   | 04/26/2004 | APPEAL BRIEF FILED   |  |    |    |
| 34   | 04/26/2004 | REQUEST FOR EXTENSION OF TIME - GRANTED                            |  |    |    |
| 33   | 01/22/2004 | NOTICE OF APPEAL FILED   |  | 43 | 30 |
| 32   | 10/20/2003 | MAIL NOTICE OF RESTARTED RESPONSE PERIOD                           |  |    |    |
| 31   | 10/17/2003 | LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES) |  |    |    |
| 30   | 09/10/2003 | MAIL FINAL REJECTION (PTOL - 326)                                  |  |    |    |
| 29   | 09/08/2003 | FINAL REJECTION  |  |    |    |
| 28.7 | 06/19/2003 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED                       |  | 0  | 26 |
| 28   | 06/19/2003 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED                       |  |    |    |
| 27   | 07/07/2003 | DATE FORWARDED TO EXAMINER   |  |    |    |
| 26   | 06/19/2003 | RESPONSE AFTER NON-FINAL ACTION                                    |  |    |    |
| 25   | 03/19/2003 | MAIL NON-FINAL REJECTION   |  |    |    |
| 24   | 03/19/2003 | NON-FINAL REJECTION  |  |    |    |
| 23   | 01/22/2003 | CASE DOCKETED TO EXAMINER IN GAU                                   |  |    |    |
| 22   | 01/14/2003 | DATE FORWARDED TO EXAMINER   |  |    |    |
| 21   | 01/14/2003 | SUPPLEMENTAL RESPONSE  |  | 21 | 19 |
| 20   | 01/07/2003 | DATE FORWARDED TO EXAMINER   |  |    |    |
| 19   | 12/24/2002 | RESPONSE TO ELECTION / RESTRICTION FILED                           |  |    |    |
| 18   | 11/12/2002 | MAIL RESTRICTION REQUIREMENT                                       |  |    |    |
| 17   | 11/08/2002 | REQUIREMENT FOR RESTRICTION / ELECTION                             |  |    |    |
| 16   | 08/25/2002 | RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS                             |  |    |    |
| 15.7 | 03/26/2002 | INFORMATION DISCLOSURE STATEMENT (IDS)                             |  |    |    |

|    |            |  |  |  |  |
|----|------------|--|--|--|--|
|    |            | FILED  |  |  |  |
| 15 | 03/26/2002 | INFORMATION DISCLOSURE STATEMENT (IDS)<br>FILED  |  |  |  |
| 14 | 04/30/2002 | CASE DOCKETED TO EXAMINER IN GAU   |  |  |  |
| 13 | 04/25/2002 | APPLICATION DISPATCHED FROM OIPE   |  |  |  |
| 12 | 04/09/2002 | APPLICATION IS NOW COMPLETE  |  |  |  |
| 10 | 03/18/2002 | PAYMENT OF ADDITIONAL FILING<br>FEE/PREEXAM  |  |  |  |
| 9  | 03/18/2002 | A STATEMENT BY ONE OR MORE INVENTORS<br>SATISFYING THE REQUIREMENT UNDER 35 USC<br>115, OATH OF THE APPLIC |  |  |  |
| 8  | 03/18/2002 | APPLICANT HAS SUBMITTED NEW DRAWINGS<br>TO CORRECT CORRECTED PAPERS PROBLEMS                               |  |  |  |
| 7  | 12/12/2001 | REFERRED BY L&R FOR THIRD-LEVEL<br>SECURITY REVIEW. AGENCY REFERRAL<br>LETTER GENERATED                    |  |  |  |
| 6  | 01/23/2002 | CRF IS GOOD TECHNICALLY / ENTERED INTO<br>DATABASE   |  |  |  |
| 5  | 01/18/2002 | NOTICE MAILED--APPLICATION INCOMPLETE--<br>FILING DATE ASSIGNED  |  |  |  |
| 3  | 12/12/2001 | IFW SCAN & PACR AUTO SECURITY REVIEW   |  |  |  |
| 2  | 11/29/2001 | IFW SCAN & PACR AUTO SECURITY REVIEW   |  |  |  |
| 1  | 11/14/2001 | INITIAL EXAM TEAM NN   |  |  |  |

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#### EXPLANATION OF PTA CALCULATION

#### EXPLANATION OF PTE CALCULATION

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